

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMES R. MULLINS, JR.,

Plaintiff,

:

Case No. 3:12-cv-131

-vs-

District Judge Timothy S. Black
Magistrate Judge Michael R. Merz

:

BANK OF AMERICA CORP.,

Defendant.

ORDER TO REMOVING PARTY

This case is a purported removal to federal court of an action pending in the Common Pleas Court of Preble County, Ohio. James R. Mullins, Jr., who lists himself as Plaintiff in this case, purports to be one of the Defendants in the Preble County case.

In his Notice of Removal, Mr. Mullins states that removal has been consented to by all the Preble County Defendants except the Federal Home Loan Bank of Cincinnati and the Preble County Treasurer. Mr. Mullins is hereby notified that consent must be unanimous and a purported removal without the consent of all Defendants is ineffective. 28 U.S.C. § 1441.

Mr. Mullins claims in his Notice of Removal that removal is proper on the basis of 28 U.S.C. §§ 1331 and 1343. However, Mr. Mullins has not filed in this Court, as required by 28 U.S.C. § 1446(a), a “copy of all process, pleadings, and orders served upon such defendant or defendants in such action.” Removability depends on whether claims made by the Plaintiff in the state court action in fact come within the original jurisdiction of the United States District Court. Mr. Mullins is ORDERED to file with this Court a copy of all process, pleadings, and orders served upon him in the Preble County action. While Mr. Mullins claims at Doc. No. 1-1, PageID 5 that he has

attached “[a]ll state-court papers served on the Defendant at the time of removal . . . are attached as EXHIBITS “2” through ‘13.’” That statement is not correct: there are no Exhibits 2 through 13 attached at all.

Mr. Mullins has filed with his Notice of Removal what appears to be intended as an original Complaint in this Court. The Court does not understand the intended function of that document since Mr. Mullins is a removing Defendant.

Along with his Notice of Removal, Mr. Mullins has filed copies of documents filed in the Preble County Common Pleas Court on April 26, 2012, which claim that that court’s Case No 09-cv-027935 had already been removed as of the date the Notice was filed in Preble County. That statement is untrue: nothing was filed in this Court until May 1, 2012.

It is accordingly ORDERED that James Mullins, Jr., correct the deficiencies listed above and that he forthwith notify the Preble County Common Pleas Court that he filed nothing in this Court until May 1, 2012, and file a certificate with this Court that he has given such notice.

May 1, 2012.

s/ **Michael R. Merz**
United States Magistrate Judge